

## **THE CONDUCT OF ELECTIONS**

An Introduction to Georgia's Election Code

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## **INTRODUCTION**

This paper is intended to provide a brief introduction to Georgia's Election Code. The Code has developed over time since its origination as Georgia's first unified election code enacted in 1964. Prior to 1964, the State's election-related statutes were scattered through a wide array of provisions. The General Assembly created its first Election Laws Study Committee (ELSC) in 1957, as a way of trying to address that situation.<sup>1</sup> When that attempt lead nowhere, another committee was created in 1961 but again produced no solution to the problem. *Id.* Finally, in 1963 Governor Carl Sanders called for the formation of a third ELSC to draft a comprehensive revision and consolidation of Georgia's election statutes. *Id.* This committee eventually proposed legislation that became Act No. 26 of the 1964 special session of the General Assembly. 1964 Ex. Ga. Laws 26. This legislation was the foundation for the current Election Code of Georgia.

## **THE BASIC PARAMETERS**

### **1. Constitutional Provisions**

The beginning point for an understanding of the State's Election Code is both the United States and Georgia Constitutions. The U.S. Constitution provides that members of the House and Senate shall be elected by the "People of the several States." U.S. CONST. art. I, § 2, cl. 1; amend. XVII. However, the regulation of the time, manner and place of those elections is specifically reserved to the States. U.S. CONST. art. I, § 2, cl.1. Additionally, while the Constitution also guarantees to the states a republican form of government, it otherwise does not specifically define the right to vote as an individual

constitutional right. U.S. CONST. art. IV, § 4. That determination was left to await later case law development.<sup>2</sup>

The State Constitution, however, picks up where the U.S. Constitution leaves off. Under the Georgia Constitution there is a specific right for persons to register and to vote by secret ballot. GA. CONST. Art. II, Sec. I, Para. I, II. These rights are provided to U.S. citizens who are also Georgia citizens and are at least 18 years old. *Id.* The General Assembly is specifically given the authority to establish the statutory structure for how persons register to vote. GA. CONST. Art. II, Sec. I, Para. II. However, persons convicted of a felony involving moral turpitude and who are still serving their sentence are constitutionally prohibited from registering, remaining registered or voting<sup>3</sup>. GA. CONST. Art. II, Sec. I, Para. III(a). Additionally, no person who has been judicially determined to be mentally incompetent can register, remain registered or vote until that disability has been removed. GA. CONST. Art. II, Sec. I, Para. III(b).

In addition to addressing a voter's rights, the Georgia Constitution also has some very significant provisions regarding candidates and public officials. Only a registered voter may qualify to run for public office in Georgia. GA. CONST. Art. II, Sec. II, Para. III. However, if a person has been convicted of a felony involving moral turpitude, then that person cannot be a candidate for public office unless ten years have elapsed from the date of *the completion of the person's sentence*. *Id.*

The General Assembly is also authorized to establish statutory procedures for the recall of public officials, which it has done, and to provide for qualifications to hold office for positions other than ones specifically defined in the Constitution. GA. CONST. Art. II, Sec. II, Para. III, IV. Also if an elected official qualifies to run for another elected

position, and the two terms of the offices involved have more than a 30 day overlap, the public official vacates his or her office by operation of law. GA. CONST. Art. II, Sec. II, Para. V. Finally the Constitution provides for procedures for the suspension or removal of public officers should they be indicted for certain types of felonies or convicted of a felony. GA. CONST. Art. II, Sec. III, Para. II, III.

## 2. The Structure of the Election Code

Title 21 of the Official Code of Georgia Annotated is Georgia's Election Code. It can sometimes be difficult to navigate and a challenge to understand. The statutes are generally grouped into areas dealing with a particular subject or issue. Chapters One and Two of the Election Code deal with general election principles and the actual mechanics of running an election. Chapter Two itself, which is the heart of the Code, is divided into various Articles addressing the following topics:

Article 1 – General Statutory Provisions – O.C.G.A. §§ 21-2-1 through 21-2-17.

Here you will find information on a diverse array of subjects including where you cannot post campaign posters and signs, definitions of terms used in the Code, the description of Georgia's congressional districts, how to challenge the qualifications of a person running for office, the date of elections and what to pay presidential electors.

Article 2 – Election Officials and the Administration of Elections – O.C.G.A. §§ 21-2-30 through 21-2-100

These Code sections explain which entities have what authority in the supervising and conducting of elections. The State Election Board is explained, as are county Boards of Elections or Boards of Election and Registration. The roles of election superintendents on the state and local levels are outlined, as well as the role and operations of poll officers.

Articles 3, 4 and 5: - Political Parties and Selection of Candidates –  
O.C.G.A. §§ 21-2-110 through 21-2-200

Here you find the explanations of what is a political party versus what is a political “body”, as well as how these groups obtain ballot access for their candidates in primaries, including the presidential preference primary, and general elections.

Article 6 - Voter Registration – O.C.G.A. §§ 21-2-210 through 21-2-236

These statutes explain who can register voters and what happens with that information once it is gathered.

Articles 7, 8, 9, 10 and 11 – Where and How to Vote – O.C.G.A. §§ 21-2-260 through 21-2-486

This is where the real “nuts and bolts” of conducting an election is outlined in the code, including where and how to vote. The various types of authorized voting equipment are explained here and the procedures for all types of voting, including absentee voting, are defined.

Articles 12 and 13 – After the Election is Over – Counting Ballots and Contests to Results - O.C.G.A. §§ 21-2-490 through 21-2-529

The handling and requirements for security for election materials is explained in these Code sections, as well as the procedures for contesting the results of an election.

Article 14 - The Rules for Special Elections - O.C.G.A. §§ 21-2-540 through 21-2-545

The particular requirements for special elections, basically elections to fill vacancies outside of the ordinary time frame for elections, are laid out here.

Article 15 - Criminal Violations of the Elections Code – O.C.G.A. §§ 21-2-500 through 21-2-562

The various misdemeanor and felony violations of the Code are defined here.

Chapter Three of the Election Code once contained separate rules for the conducting of municipal elections. These requirements in many ways paralleled the

requirements of the general election code, which applied to federal, state and county elections, but contained enough minor differences as to be maddeningly confusing and the source of great frustration with anyone who had to deal with this area of the law. The Municipal Election Code was repealed in its entirety in 1998 and city elections were brought within the ambit of Chapter Two and the rest of the Election Code.

Chapter Four of the Code deals with recall elections. Recalls of public officials are permitted under the Georgia Constitution and the complex procedures for undertaking a recall are outlined in O.C.G.A. § 21-4-1 through 21-4-21. Anyone involving himself or herself in a recall election would do well to study these statutes in great detail.

Chapter Five of the Election Code is the Georgia Ethics in Government Act. Here, from O.C.G.A. § 21-5-1 through 21-5-73, the General Assembly has established the requirements for reporting campaign contributions and expenditures and for the registration of lobbyists. The State Ethics Commission is created as the body to enforce this Act and, while it is administratively attached to the Office of the Secretary of State, it operates independently of that office in carrying out its responsibilities.

## **ELECTIONS**

### **1. What is an "election?"**

Like much in the law, this is a question whose answer is somewhat more complicated than might be anticipated. There are primary and general elections. There are partisan and nonpartisan elections. There are statewide, less-than statewide and local elections. All of them have their own peculiarities in how they are conducted.

The Election Code differentiates between types of elections. There are primary elections, that is “any election held for the purpose of electing party officers or nominating candidates for public offices.” O.C.G.A. § 21-2-2(29). A “general primary” is a primary election that recurs at stated intervals fixed by law.” O.C.G.A. § 21-2-2(8). While Georgia previously had non-partisan primaries, those have now been eliminated and candidates are elected without the use of any primary at all. See *e.g.*, O.C.G.A. § 21-2-138, 21-2-139.

Primary elections are usually held on the third Tuesday in July in even-numbered years. O.C.G.A. § 21-2-150(a). That is, they are held then unless the primary would occur during the same week of the national convention of the two political parties that received the highest number of votes in the previous presidential election. O.C.G.A. § 21-2-150(b)(1) (As amended 2001 Ex. Ga. Laws 325, 332 § 6). In the event of that circumstance, the primary is to be conducted on the *second* Tuesday of July. *Id.* On the other hand, if the general primary is being held in the even-numbered year immediately following the official release of the U.S. Decennial Census information (i.e., 2002, 2012, etc.), the primary moves to the next-to-last Tuesday in August. O.C.G.A. § 21-2-150(b)(2). This provision will be applied for the first time ever this year so that primary elections will be held on Tuesday, August 20, 2002.

Primaries shouldn't be confused with regular or general elections, which are elections “recurring at stated intervals fixed by law.” O.C.G.A. § 21-2-2(5, 8). At a general election, voters elect a candidate to office or can approve ballot questions. General elections are held on the Tuesday following the first Monday in November in each even-numbered year. O.C.G.A. § 21-2-2(15).



Because a candidate must receive a majority of the votes in order to be nominated in a primary or 45% of the votes cast to be actually elected to office, there may need to be a run-off election if those conditions are not met. GA. CONST. Art. II, Sec. II, Para III; O.C.G.A. § 21-2-501(a)<sup>4</sup>. A run-off election is actually a continuation of the first election and only those persons who were entitled to vote in the first election can vote in the run-off. *Id.*

There are also “special” primaries and elections. O.C.G.A. § 21-2-2(33, 34). These are elections that arise from some exigency or a special need outside of the usual routine. *Id.* Customarily, these are elections to fill vacancies in public offices, but can also be called for purposes of placing a question to the voters. O.C.G.A. § 21-2-540.<sup>5</sup> There are statutory restrictions on when a special election may be held. O.C.G.A. § 21-2-540(c)(1). In odd-numbered years, a special election may be held only on:

- The third Tuesday in March;
- The third Tuesday in June;
- The third Tuesday in September; or
- The Tuesday after the first Monday in November.

O.C.G.A. § 21-2-254(c)(1)(A). The schedule varies slightly during even numbered years, given those are the years in which elections are otherwise being held. The election-year dates for special elections are:

- The third Tuesday in March or on the date of the presidential preference primary if held that year;
- The date of the general primary;
- The third Tuesday in September; or
- The Tuesday after the first Monday in November.

O.C.G.A. § 21-2-540(c)(1)(B).

In the event that there are unopposed candidates in a primary, general or special election, there may not be a need to hold an election at all. O.C.G.A. §§ 21-2-158, 21-2-291. The unopposed candidate is generally deemed to have voted for himself or herself and is declared the winner. *Id.* However, should a general primary election be held where there is an unopposed candidate whose name appears on the ballot and that candidate fails to receive even a single vote in any precinct, then the candidate is not nominated and that party fails to have any nominee for that office. O.C.G.A. § 21-2-158.

## 2. Who runs an election?

The official who is responsible for running an election is the “superintendent.” The Code says that the superintendent can be any one of several people, depending on the election involved. O.C.G.A. § 21-2-2(35)(A-D). For counties or elections run by counties, the “superintendent” can be either the probate judge of the county or a county board. O.C.G.A. § 21-2-2(35)(A). See *also* O.C.G.A. § 15-9-30(b)(2). If the county chooses to operate through a “board”, it can be denominated a “board of elections”, a “board of elections and registration”, a “city-county board of elections” or a “joint city-county board of elections and registration.” O.C.G.A. § 21-2-2(35)(A). Commonly, though, if the county chooses to have its superintendent be one of these boards, the board will then hire an “election supervisor” to carry out the day-to-day operations of the office. (See Appendix One for a listing of Georgia’s counties and superintendents.)

For a municipal primary, the “superintendent” is the municipal executive committee of the political party holding the primary or, if there isn’t a municipal executive committee, it’s the county executive committee. O.C.G.A. § 21-2-2(35)(B). If the

municipal primary is nonpartisan, then the “superintendent” is a person appointed by the proper municipal executive committee. O.C.G.A. § 21-2-2(35)(C). Finally, a municipality may appoint someone, such as the city clerk, to serve as the election superintendent. O.C.G.A. §§21-2-2(35)(d), 21-2-70, 21-2-70.1.

These “superintendents” have a multitude of duties and responsibilities assigned to them by law. O.C.G.A. § 21-2-70. One of the most important of their duties is to “call” for the election. “Calling an election,” is when the superintendent takes some affirmative action to set the date for a special or general election and to announce that date to the public. O.C.G.A. § 21-2-2(3). The date of the call of the election is the date of its first publication in a newspaper of appropriate circulation. *Id.* There must be at least 29 days between the issuance of the call for a special election and the holding of that election. O.C.G.A. § 21-2-540(b).

Election superintendents are also responsible for setting up and changing voting precincts, determining whether candidates are qualified to run for office, selecting and equipping polling places, appointing and training poll and other officers, receiving election returns and announcing their results, among other duties. *Id.* Because of the extensive nature of all of these duties, they are also required to obtain a minimum of 12 hours training in election law from the Secretary of State every year. O.C.G.A. § 21-2-100.

Given the sensitive nature of these responsibilities, no one who holds an elective office can be a member of a county board of elections, and an election board member vacates his or her office if he or she qualifies to run for an elected office.

O.C.G.A. § 21-2-75(a). Additionally, no one who holds office in a political party is eligible to serve as the chairperson of an election board. O.C.G.A. §§ 21-2-75(b).

There are also specific provisions that apply when a probate judge serves as an election superintendent. This is necessary because a probate judge is the only elected official who can serve as an actual election superintendent, i.e., the probate judge would be running as a candidate in a contested election that he or she was directly supervising. O.C.G.A. § 21-2-74(a), 21-2-75(b), 21-2-76. In order to deal with this situation, State law provides that where a probate judge is running for re-election in a contested election, then a special temporary board is created to act as the election superintendent for that election. *Id.* This temporary board is chaired by the probate judge and consists of two electors, one named by the Democratic Party and one by the Republican Party, who then jointly undertake the superintendent's duties. *Id.* This helps alleviate fears of a "conflict of interest" in the probate judge supervising his or her own election.

Of course, election superintendents and supervisors cannot conduct elections by themselves. There are a wide range of people who assist in doing so. The superintendents are authorized to hire poll managers and poll workers to assist them. O.C.G.A. § 21-2-90 *et seq.* In each precinct, the law requires there be a chief poll manager and two assistant managers, plus clerks, who run the actual polling places within a voting precinct.<sup>6</sup> O.C.G.A. § 21-2-90. Poll workers must be "judicious, intelligent, and upright citizens of the United States", residents of the county or municipality in which they are appointed, be over the age of 16 and be able to read, write and speak the English language. O.C.G.A. § 21-2-92. They must also be properly

trained to carry out their duties and responsibilities by the election superintendent.

O.C.G.A. § 21-2-99. Of course, they cannot be candidates for nomination or election in the election for which they are working and cannot currently be holding a public office.

*Id.* A poll worker cannot also be the parent, spouse, sibling or in-law of a candidate on the ballot being voted at that election. *Id.*

It is the poll workers who are charged with the responsibility of checking voters' identification when they come to vote and making sure the voter receives the proper ballot. O.C.G.A. §§ 21-2-406, 21-2-417. There is a statutorily defined list of acceptable identification for voters and, if a voter is unable to produce anything from this list, there is a form affidavit that the voter can complete verifying his or her identification.

O.C.G.A. § 21-2-417(a, b).

During an election, a candidate may suggest to his party the name of one poll watcher for each precinct in the election. O.C.G.A. § 21-2-408(a). The party or a political body can designate the names of a total of two poll watchers for each precinct in the election. O.C.G.A. § 21-2-408(a, b). Independent candidates can also designate one poll watcher for each precinct. O.C.G.A. § 21-2-408(b). Additionally, in statewide elections, political parties, bodies and independent candidates can designate up to five statewide poll watchers. O.C.G.A. § 21-2-408(b)(2). A candidate cannot be a poll watcher. O.C.G.A. § 21-2-408(e).

While poll watchers are present to help assure the integrity of the election process, they cannot in any way interfere in the conduct of the election.

O.C.G.A. § 21-2-408(d). Poll watchers cannot talk to voters, check electors' lists, use

photographic or other electronic monitoring or recording devices or cellular telephones nor can they participate in any form of campaigning in the polling place. *Id.*

### 3. The Secretary of State and the State Election Board

All of these officials who serve as “superintendents” are the people who are actually charged with the conducting of the elections. They are the people who set up the precincts or polling places, cause the ballots to be printed, set up the voting equipment, count the ballots and declare the winners of the elections. There is one election official that does none of this, but is still Georgia’s “chief election official.” That person is Georgia’s Secretary of State.

The Office of the Secretary of State is created under the Constitution for the State of Georgia, where the General Assembly is given the authority to prescribe the powers and duties of the office. GA. CONST. Art. V, Sec. III, Para. I. *See also generally* O.C.G.A. § 45-13-1 *et seq.* In exercising this authority, the General Assembly has initially empowered the Secretary of State to carry out a wide range of responsibilities in the area of overseeing the State’s election process. O.C.G.A. § 21-2-50(a)(1-14). These include setting the forms for nomination petitions and ballots, receiving nomination petitions from persons running for state offices, determining whether such candidates are properly qualified and generally facilitating the operation of the State’s election system by helping to train and coordinate with the various local officials. Additionally, Georgia law designates the Secretary of State as the chief state election official to coordinate the State’s responsibilities under the National Voter Registration Act of 1993 and as the Chairperson of the State Election Board. O.C.G.A. §§ 21-2-210; 21-2-30(a, d). The Secretary is also empowered with numerous other duties and

responsibilities as defined throughout Georgia's Election Code, including but not limited to the review, verification and certification of direct electronic recording voting systems. O.C.G.A. § 21-2-379.2. As such, local election officials will look to her office for guidance and coordination on election questions.

The State Election Board (the SEB), which the Secretary of State chairs, is also not an "election superintendent" but is more the body that helps devise and then enforce the overall policies and laws involved in running elections. O.C.G.A. § 21-2-30. In addition to the Secretary of State, the SEB consists of an elector selected by a majority vote of the House and an elector selected by a majority of the Senate, as well as a member appointed by each political party recognized in the State. O.C.G.A. § 21-2-30(a). No member of the General Assembly, though, can be a member of the SEB. *Id.*

The SEB is charged under the law with:

- 1, Supervising and coordinating the work of the office of the Secretary of State, superintendents, registrars, deputy registrars, poll officers, and other officials to obtain uniformity in their practices and proceedings and legality and purity in all primaries and elections;
2. Formulating, adopting and promulgating such rules and regulations consistent with the law as are conducive to the fair, legal and orderly conduct of primaries and elections;
3. Publishing and furnishing to primary and election officials indexed copies of all primary and election laws and rules and regulations;
4. Publishing and distributing explanatory pamphlets regarding the interpretation and application of primary and election laws;
5. Investigating or authorizing the Secretary of State to investigate the administration of primary and election laws, frauds and irregularities and to report violations to the Attorney General or the appropriate district attorney;

6. Recommending legislative changes in the election code; and
7. Taking such other action that may be conducive to the fair, legal and orderly conduct of primaries and elections.

O.C.G.A. § 21-2-31. The SEB also has the authority to institute or intervene in any action in state or federal court to enforce the State's election laws. O.C.G.A. § 21-2-32(a). Finally, the SEB has the authority to cite entities or individuals for violations of State election laws or regulations and, after proceedings under the Georgia Administrative Procedure Act, to impose sanctions, including monetary penalties of up to \$5,000 for *each violation* of those rules or regulations. O.C.G.A. § 21-2-33, 21-2-33.1. Given this authority, actions by the SEB are not taken lightly nor can they be ignored.

#### 4. Election Contests

After an election is held there is an opportunity to challenge or “contest” the results, but it must be done in a specific manner and within a very short time frame. The failure to follow the statutory requirements can lead to the dismissal of the contest altogether.

The “contest” statute provides that the nomination or election of any candidate for federal, state, county or municipal office can be challenged or contested by any person who was a candidate in the election or “any aggrieved elector who was entitled to vote for such person or for or against such question.” O.C.G.A. § 21-2-521. The only defendants in such a contest are:



1. The person whose nomination or election is contested;
2. The person or person whose eligibility to seek any nomination or office in a run-off primary or election is contested;
3. The election superintendent or superintendents who conducted the contested primary or election; or
4. The public officer who formally declared the number of votes for and against any question submitted to electors at an election.

O.C.G.A. § 21-2-520(2)(A-D). While a copy of any contest petition must be served on the State Election Board, *neither the Board nor the Secretary of State is proper defendant in most election contests*. O.C.G.A. § 21-2-524(b).

A contest can be filed on one or more of the following grounds:

1. Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the results;
2. Ineligibility of the defendant for the nomination or the office in question;
3. The receiving of illegal votes or the rejection of legal votes sufficient to change or place in doubt the result of the election;
4. Any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or
5. For any other cause that shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

O.C.G.A. § 21-2-522(1-5). The standard for review of election contests was succinctly outlined in *Middleton v. Smith*, 273 Ga. 202,203 (2000), where the Supreme Court noted:

We must presume that the results of an election contest are valid. *Streeter v. Paschal*, 267 Ga. 207, 208 (476 S.E.2d 759) (1996). Thus, an election will not be invalidated unless the party contesting the election demonstrates an irregularity or illegality sufficient to change or place in doubt the result. *Id.*; *Bailey v. Colwell*, 263 Ga. 111 (428 S.E.2d 570) (1993). To carry that burden, the challenger must show a specific number of illegal or irregular ballots -- and that number must be sufficient to cast doubt on the result of the election. *McCranie v. Mullis*, 267 Ga. 416 (478 S.E.2d 377) (1996). *Accord Hunt v. Crawford*, 270 Ga. 7 (507 S.E.2d 723) (1998); *Accord Taggart v. Phillips*, 242 Ga. 454 (249 S.E.2d 245) (1978). It is not sufficient to show irregularities which simply erode confidence in the outcome of the election. Elections cannot be overturned on the basis of mere speculation, *Hunt, supra* at 9, or an appearance of impropriety in the election procedures. *Compare Stiles v. Earnest*, 252 Ga. 260, 263 (312 S.E.2d 337) (1984).

This is a heavy burden for a contestant to carry and it must be done through a contest petition filed within 5 days of the official consolidation and certification of the results.

O.C.G.A. § 21-2-524(a). That 5 day time period, like other time periods in the Election Code, *includes* Saturdays, Sundays and legal holidays. O.C.G.A. § 21-2-14. Only when the last day to file a contest, or to exercise some other right under the Election Code, falls on one of those non-business days is there an extension to permit filing on the next business day. *Id.*

Courts will move very expeditiously to assign a judge to hear the case and to have an evidentiary hearing. O.C.G.A. §§ 21-2-523, 21-2-525. The form, timing and notice requirements of the contest statutes are usually strictly adhered to given the expedited nature of the proceedings and the necessity of moving forward with the next stage of the election process or in determining the final results of an election. *See Head v. Williams*, 269 Ga. 894, 895-96 (1998). The failure to verify the petition or to serve the State Election Board could lead to the dismissal of the contest. There is a right to a trial

by jury as to the factual issues in a case, but given the expedited nature of such a case the parties may not find it practical to invoke that right. O.C.G.A. § 21-2-526. The trial court itself has wide-ranging and plenary authority to grant a remedy in an election contest and parties have a right to review and object to settlements in these cases. O.C.G.A. §§ 21-2-525(b), 21-2-527, 21-2-527.1. Should there be an appeal of the decision, that notice of appeal does not act as a stay or supercedeas. O.C.G.A. § 21-2-528. Instead a stay must be sought from the Supreme Court which has exclusive jurisdiction in the appeal of election contest cases. GA. CONST. Art. VI, Sec. VI, Para. II(2); O.C.G.A. § 21-2-528.

### **VOTER REGISTRATION**

#### **1. Who can register to vote?**

As noted above, there are State constitutional requirements for a person to be qualified to register to vote in Georgia. A person must be a citizen of the U.S. and Georgia and aged 18 or older by the time of the election. GA. CONST. Art. II, Sec. I, Para. I, II. See *a/so* O.C.G.A. § 21-2-216(a). Additionally, the person cannot suffer from one of the legally disqualifying disabilities of a felony conviction involving moral turpitude or mental incompetence. GA. CONST. Art. II, Sec. I, Para. III; O.C.G.A. § 21-2-216(b). A person can even register to vote before they reach the age of 18, provided that they will be 18 within 6 months of their registration and actually be 18 when they vote. O.C.G.A. § 21-2-216(c).

2.     How do you register to vote?

The single most significant change in the area of voter registration in recent years has been the passage of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, which is generally referred to under the shorthand term of “Motor Voter.” Georgia’s voter registration statutes were drastically revamped in the wake of this statute and comply with the requirements of this federal law.

The traditional form of voter registration occurs through the operation of a county Board of registrars, which consists of between three and five “judicious, intelligent, and upright” persons who are appointed to four-year terms by the superior court judge of the county based on a recommendation from the grand jury. O.C.G.A. § 21-2-212(a). The county registrars must be themselves registered to vote in Georgia and able to read, write and speak the English language. O.C.G.A. § 21-2-214(a). One of the registrars is designated as the chief registrar who serves as the chief administrative officer of the board and generally supervises and directs the administration of the registrar’s office. O.C.G.A. § 21-2-212(a, d). All of these registrars and their designees are generally prohibited from engaging in political activity. O.C.G.A. § 21-2-214(c).

In some larger counties and in municipalities the governing authorities can appoint the registrars, rather than a superior court judge. O.C.G.A. § 21-2-212(c, e). Municipal registrars must meet the same qualifications as county registrars. O.C.G.A. § 21-2-214(a).

These boards can then appoint deputy registrars or hire staff to carry out their responsibilities. O.C.G.A. §§ 21-2-213, 21-2-214. The deputy registrars must also be registered voters in Georgia, able to read, write and speak the English language and

can never have been convicted of a felony or of any crime involving fraud or moral turpitude. O.C.G.A. § 21-2-214(a). Other persons can be designated as deputy registrars, such as college and university presidents or their designees who are by a rule of the SEB deputy registrars for registering their students, staff and faculty. SEB Rule 183-1-6.05.

These various officials are in place to accept applications from individuals to register to vote. O.C.G.A. §§ 21-2-215, 21-2-220. The board of registrars is made up of officials who coordinate the cancellation or transfer of voter registration data between jurisdictions. O.C.G.A. § 21-2-218. The board must also determine whether a person is eligible to register to vote or to remain registered. O.C.G.A. § 21-2-226. Usually a board will do this through conducting an evidentiary hearing that will inquire into a person's qualifications, such as his or her residence or whether he or she has a criminal conviction. *Id.* In questions dealing with residency issues, the General Assembly has provided a series of "Rules for Determining Residence" which the registrars can look to for guidance. O.C.G.A. § 21-2-217. One commonly invoked rule is the provision that "The county or municipality in which a person has declared a homestead exemption, if a homestead exemption has been claimed, shall be deemed the county or municipality of the person's residence." O.C.G.A. § 21-2-217(a)(17).

Of course, going personally to a registrar is not the only way to register to vote any more. With the advent of "Motor Voter" laws, any time a person applies to obtain, renew or change information on a driver's license, they are offered the opportunity to register to vote. O.C.G.A. § 21-2-221(a). Additionally, a person can register at every state office that provides public assistance, offers state funded programs primarily

engaged in providing services to persons with disabilities and in recruiting offices of the armed forces. O.C.G.A. § 21-2-222(b). Other state offices may also be registration locations, such as public libraries, public schools, offices of county and municipal clerks, and other government offices. O.C.G.A. § 21-2-222(c).

If a person cannot get to any of these places of registration, he or she can still register to vote through a mail-in application. O.C.G.A. § 21-2-219(b). The State provides pre-paid post cards for this purpose which are accepted for all purposes for voter registration. *Id.*

The information that is gathered through the non-traditional methods of registration, such as at state agencies or by post cards, is sent to the Secretary of State's office, which then routes the registration applications to the appropriate county registrars. O.C.G.A. §§ 21-2-222(i), 21-2-223. The Secretary does not act as a registrar herself in this ministerial action, but instead acts as a clearinghouse and coordinator for this registration information and permits the Secretary to maintain a statewide voter registration list. *Id.*; *See also* O.C.G.A. § 21-2-211.

### **POLITICAL PARTIES AND CANDIDATES FOR OFFICE**

#### **1. What is a political party?**

Under Georgia law, not every political organization is considered a "political party" for purposes of the Election Code. An organization is considered a political party only if, in the immediately preceding general election in question:

1. The organization nominated a candidate for Governor who received at least 20 percent of the total vote cast in the State for Governor; or

2. The organization nominated a candidate for President of the United States whose candidates as presidential electors received at least 20 percent of the total vote cast in the nation for that office.

O.C.G.A. § 21-2-2(25). At the present time, there are only two organizations that meet that standard in Georgia, the Democratic and Republican Parties. All other political organizations are defined as “political bodies” under the law. O.C.G.A. § 21-2-2(23).

Political parties are the entities that voters are most familiar with in the election process. The parties conduct partisan primaries at appointed times to nominate their candidates, whose names then appear on the general election ballots. O.C.G.A. § 21-2-150 *et seq.* Political body candidates or independent candidates obtain ballot access by demonstrating a modicum of public support through presenting petitions with a certain number of signatures of registered voters. O.C.G.A. §§ 21-2-170 *et seq.*<sup>7</sup> Additionally, a political body can obtain automatic ballot access for its candidates for statewide office if the political body files an appropriate nominating petition with the Secretary of State or if, at the preceding general election, the political body nominated any candidate for statewide office that received a number of votes equal to one percent of the total number of registered voters who were registered and eligible to vote in that election. O.C.G.A. § 21-2-180.

Of course, not all elections are partisan in nature. State judicial offices are nonpartisan and the General Assembly may, by local legislation, provide for county judicial offices, local school board offices and the offices of consolidated local government offices to be elected in nonpartisan elections. O.C.G.A. §§ 21-2-138, 21-2-139. These offices are now elected without conducting a nonpartisan primary. *Id.*

## 2. How to Qualify as a candidate for office

In addition to meeting the basic constitutional or statutory requirements for office, in order to be a candidate a person must also satisfy procedural requirements to get his or her name on a ballot. Generally, a person does this by:

1. Being nominated in a political party primary;
2. Filing a nomination petition as described above;
3. Being nominated for statewide office by a political body's convention, where the body has met the requirements for doing so;
4. Being nominated as a presidential elector in accordance with the rules of a political party;
5. Being named in a substitute nomination for a political party or body candidate;
6. Being a candidate in a special election; or;
7. Being an incumbent qualifying to succeed yourself.

O.C.G.A. § 21-2-130.

Generally, candidates for nomination or election must file an affidavit attesting that they meet the constitutional and statutory qualifications for holding the office they seek with an appropriate official at a specified time and candidates must also pay a “qualifying fee” based upon the salary of the office sought. O.C.G.A. §§ 21-2-131, 21-2-132, 21-2-153, 21-2-153.1. However, the payment of a qualifying fee with a check that is later dishonored is tantamount to failing to pay the qualifying fee at all and could lead to a disqualification of the candidate.

The Secretary of State sets the qualifying fee for state offices and the local governing authorities do so for county or municipal offices. O.C.G.A. § 21-2-131(a).



Such fees are generally 3% of the annual or total gross salary of the office sought, usually including all salary supplements for the local offices.<sup>8</sup> *Id.* The qualifying fee for a candidate to the General Assembly is \$400. O.C.G.A. § 21-2-2131(a)(2). If there is no salary for a state office, the Secretary of State may set a reasonable qualifying fee not to exceed 3% of the annual income derived from the office. *Id.* If there is no salary for a local office, the county or municipal governing authority may also set a reasonable qualifying fee, not to exceed 3% of the income derived the preceding year from the county office or not to exceed \$35 for a municipal office. O.C.G.A. § 21-2-131(a)(1). The qualifying fees for candidates in a political party primary are then *pro rata* shared between the party and the governmental entity running the primary election. O.C.G.A. § 21-2-131(b, c).

A person may qualify for office without paying a qualifying fee as well. O.C.G.A. § 21-2-132(g). Such a candidate must file an affidavit swearing to his or her poverty and inability to pay the qualifying fee. *Id.* The affidavit must include a financial statement that lists the total income, assets, liabilities and other relevant information and show on its face that the candidate has no assets or income to pay the qualifying fee. *Id.* Additionally, such an *in forma pauperis* candidate, if running for a statewide office, must demonstrate some amount of voter support by filing a petition equal to one-fourth of one percent of the total number of persons eligible to vote in the last election for that office. O.C.G.A. § 21-2-132(h)(1). If the candidate is seeking any other office, the petition must contain signatures equal to one percent of the number of persons eligible to vote for that office in the last election. *Id.*

A person may also run as a write-in candidate for a public office. O.C.G.A. § 21-2-133. In order to do this, the write-in candidate must file with the appropriate qualifying officer a notice of his or her intention to be a candidate for a particular office . *Id.* The candidate must publish an advertisement between January 1 and the first Monday in September prior to the election announcing his or her candidacy. *Id.* The candidate must also file with his or her qualifying official a copy of the published advertisement and an affidavit swearing to its publication. *Id.* A person cannot be a write-in candidate in any primary or in a special or general election runoff election. O.C.G.A. § 21-2-133(c). Additionally, a person cannot be a write-in candidate in a general or special election for which he or she was a candidate for the same office in the immediately preceding primary election. O.C.G.A. § 21-2-133(d).

In any of these circumstances where a person qualifies as a candidate by the petition method, the petition circulators must be careful to maintain the integrity of their petitions and notarizations. Generally, petition requirements will include some sort of a circulator's affidavit attesting to the qualifications of the signers and that all of the procedural requirements of the law have been met in circulating the petition page. See *e.g.*, O.C.G.A. §§ 21-2-132(h)(3), 21-2-170(d), 21-2-183(b). The affidavit permits the petition pages to be self-proving or authenticating that all of the requirements of the law were met and that, for example, signatures were not gathered early. Because the statement is an affidavit, however, it must be under oath and that oath is administered and proven by the notarization of the affidavit.

Under Georgia law, though, a notary must be a person disinterested in the substance of the document being notarized and cannot also be a signer of that

document. O.C.G.A. 45-17-8(c). That means that, in the petition situation, the circulator of *any* petition page is an interested party in the petition and is therefore disqualified from also being the *notary* on any of the circulator's affidavits of the petition. *Poppell v. Lanier*, 264 Ga. 473, 474 (1994); *Lewy v. Beazley*, 270 Ga. 11, 12 (1998). All of the petition pages containing such a notarization would have invalid oaths and, by law, the signatures on them cannot be counted toward meeting the signature requirements. *Id.* This prohibition is now incorporated in the petition code sections requiring a circulator's affidavit. O.C.G.A. §§ 21-2-132(h)(3), 21-2-170(d), 21-2-183(b)

### 3. Challenging a Candidate's Qualifications

There is a process for challenging whether a person has met all the qualifications for being a candidate for an office. O.C.G.A. § 21-2-5, 21-2-6. For candidates for state or federal office, any elector who is eligible to vote on the office in question can file a challenge with the Secretary of State within two weeks of qualifying, questioning whether a candidate meets the constitutional qualifications to run for that office. O.C.G.A. § 21-2-5(c). The Secretary of State herself can file such a challenge at any time up until election. *Id.* Once such a challenge is filed, it is referred to an independent administrative law judge (ALJ) at the Office of State Administrative Hearings which holds an evidentiary hearing and makes a report and recommendation back to the Secretary on the merits of the challenge. *Id.* The Secretary of State can then accept, reject, modify or remand the decision of the ALJ. *Id.* See also O.C.G.A. § 50-13-41.

For a candidate for local office, any elector who is eligible to vote on the office in question can file a challenge to the qualifications of a candidate with the superintendent

of the appropriate election. O.C.G.A. § 21-2-6(b). Like the Secretary of State, the appropriate election superintendent can file a challenge to a candidate's qualifications at any time up until election. *Id.* Once a challenge has been filed on such a local office, though, the evidentiary hearing is held before the election superintendent who then determines whether the challenge should be granted. O.C.G.A. § 21-2-6(c).

In both instances, the elector filing the challenge or the candidate can appeal the decision on the challenge a superior court judge. O.C.G.A. §§ 21-2-5(d), 21-2-6(d). In the case of an appeal of the decision of the Secretary of State, the appeal is filed in the Superior Court of Fulton County. O.C.G.A. §§ 21-2-5(d). The appeal of a decision of a local election superintendent is to the superior court of the county in which the candidate resides. O.C.G.A. §§ 21-2-6(d). In both instances, the decision of the Secretary or the superintendent can be reversed or modified if substantial rights of the appealing party have been prejudiced because the decision is:

1. In violation of the Constitution or laws of this state;
2. In excess of the statutory authority of the Secretary or the superintendent;
3. Made upon unlawful procedures;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

O.C.G.A. §§ 21-2-5(d), 21-2-6(d). An aggrieved party after that decision may then apply for a discretionary appeal of this administrative decision to either the Court of Appeals

or the Supreme Court of Georgia. *Id.* See also O.C.G.A. § 5-6-39(a)(1); *Prison Health Services, Inc. v. Georgia Dept. of Administrative Services*, 265 Ga. 810 (1995).

## **METHODS OF VOTING**

### **1. DRE Voting**

In Georgia, there are currently a variety of methods for persons to vote. Some counties still vote using paper ballots while others use lever-type voting machines. Some counties use the now infamous punch card voting system and the remainder use what are called optical scan voting devices. Most of these voting methods are now on the verge of becoming obsolete. (See Appendix Two for a listing of current voting methods.)

Over the past year, the General Assembly has moved to authorize the use of Direct Recording Electronic voting equipment. The next step in this process is to purchase, install and use the new electronic voting equipment in Georgia's 159 counties by the November 2002 general election.

This process began initially when the Georgia General Assembly passed Act No. 166 (S.B. 213) in its 2001 Session. That legislation authorized a pilot project and created the 21<sup>st</sup> Century Voting Commission to evaluate prospective electronic voting equipment tested during the 2001 general municipal elections. In November 2001, the pilot project testing six different forms of Direct Record Electronic (DRE) voting equipment was conducted in 13 different municipalities.

An exit poll conducted within the 13 municipalities revealed that over 94% of those using the equipment during the project felt that the State should upgrade its voting

equipment with equipment similar to what was used in the pilot project. All of the elections conducted with the DRE voting equipment were completed without incident.

During its 2002 Session the General Assembly approved funding the purchase of a uniform system of voting with \$54 million in bond funds. In addition, the General Assembly fully adopted the Governor's spending recommendations for Voter Education. In all over \$4 million is being allotted for voter education. To assist in the training of local election officials, \$500,000 was allotted to develop the Center for Election Systems at Kennesaw State University. This Center will provide assistance in training local election officials on the new voting system. In addition, the center will provide technical assistance to the counties in implementing the new system via a help desk. The center will remain in operation beyond the year 2002 as an instrument to train local election officials on the system as local election official turnover.

In May 2002 the Secretary of State, on behalf of the State of Georgia, signed a contract with Diebold Election Systems to provide the statewide voting system. The contract provides for more than 19,000 DRE voting units and 400 optical scan readers (to tabulate absentee ballots), software, training, support and other services. It is the largest election equipment contract in the history of the United States and marks the first time any state has acquired and funded a uniform voting system for its citizens.

## 2. Absentee Voting

Of course, a person does not need to turn up personally at a polling place on election day to vote. They may, instead, vote absentee. However, in order to do so, a voter:

1. Is required to be absent from his or her precinct during the time of the primary or election he or she desires to vote in;

2. Would perform any of the official acts or duties required under the Election Code in connection with the primary or election he or she desires to vote in;
3. Would be unable to be present at the polls on the day of the primary or election because of a physical disability or because of being required to give constant care to some who is unable to be present at the polls;
4. Would be unable to be present at the polls on the day of such primary or election because it falls upon a religious holiday observed by such voter;
5. Is required to remain on duty in his or her place of employment for the protection of the health, life, or safety of the public during the entire time the polls are open when such place of employment is within the precinct in which the voter resides; or
6. Is 75 years of age or older.

O.C.G.A. § 21-2-380.

If the voter meets one or more of these criteria, and it is no more than 180 days before the election in question, he or she is entitled to vote absentee. O.C.G.A. §§ 21-2-380, 21-2-381. Ballots will usually be available at least 45 days prior to a primary or general election or 21 days before a municipal primary or general election. O.C.G.A. § 21-2-384(a). By that time, if a voter meets the requirements for voting absentee, he or she may then either go to the registrar's office and vote there or the voter may obtain an absentee ballot, vote and then mail it back to the registrar. O.C.G.A. §§ 21-2-384, 21-2-385(c).

The first step in voting absentee is to make application for an absentee ballot. O.C.G.A. § 21-2-381(a). There is no special format for requesting an application, even though it must be in writing, and such a request can be made either by mail, by

facsimile transmission or in person. *Id.* The application must give enough information to permit the registrar to identify the voter and to determine if there is a proper reason for voting absentee. *Id.*

If a person is living temporarily out of the county or municipality or if they are physically disabled and residing within the county or municipality, an application for an absentee ballot can be made by certain persons other than the voter, provided they are over the age of 18. *Id.* These people include the voter's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law. *Id.*

In the case of an application by mail, once it has been verified, the registrar can mail the absentee ballot only to the voter's permanent registration address or to a temporary address that is either out of the county or municipality. *Id.* No ballots may be mailed out the day before the primary or the election. *Id.*; O.C.G.A. § 21-2-385(a). The absentee ballot can be voted and returned *in person or by mail* to the registrar.

O.C.G.A. § 21-2-385(a). The actual ballot may not be handled by anyone else unless the voter is physically disabled, and even then can be delivered by parents, grandparents, siblings, nieces, nephews, grandchildren, in-laws or someone who actually lives with the disabled person. *Id.* Anyone else handling the ballot could be committing a felony. O.C.G.A. § 21-2-574.

### 3. Provisional Voting

During the 2002 Session of the General Assembly new code sections O.C.G.A. §§ 21-2-418 and 21-2-419 were adopted which provide for "provisional voting." Act No. 769 (S.B. 414) (2002). "Provisional voting" would occur when:



[A] person presents himself or herself at a polling place or registration office for the purpose of casting a ballot in a primary or election believing that he or she has timely registered to vote in such primary or election and the person's name does not appear on the list of registered electors and it cannot be immediately determined that the person did timely register to vote in such primary or election, the person shall be entitled to cast a provisional ballot as provided in this Code section.

O.C.G.A. § 21-2-418(a). The voter can complete an official voter registration form and a provisional ballot voting certificate that includes information about the place, manner, and approximate date where the voter thought they had previously registered. O.C.G.A. § 21-2-418(b). As a part of this certification, the voter must also swear under oath that they did in fact previously register and that they are qualified to vote in the on-going election, that they have not previously voted in that election and that they meet all of the criteria necessary to vote in the election. *Id.*

The voter is then issued a "provisional ballot" that is sealed in an envelope, much like an absentee ballot is sealed in an outer envelope when voted, and the ballot is deposited in a ballot box. O.C.G.A. §§ 21-2-418(c), 21-2-419(a). No later than the day after the election in question the board of registrars is notified of the provisional ballots and the board is required to immediately make a good faith effort to determine whether the voter was in fact previously registered and entitled to vote. O.C.G.A. § 21-2-419(b).

No later than two days after the close of the polls the registrars have to notify the election superintendent of their conclusions. *Id.* If they determine that the voter was in fact registered and eligible to vote, the superintendent is notified and the ballot is counted. O.C.G.A. § 21-2-419(c)(1). If the registrars determine that the voter was attempting to vote in the wrong precinct, the superintendent is notified and the votes are

counted only for those races in which the voter was eligible to vote. O.C.G.A. § 21-2-419(c)(2). If the registrars determine that the person was not timely registered or was not eligible to vote, or if they cannot make any determination, then the superintendent is notified and the ballot is not counted. O.C.G.A. § 21-2-419(c)(2).

The board will notify the voter that his or her ballot was not counted and why, but will also go ahead and process the registration application filled out by the voter on election day. O.C.G.A. § 21-2-419(d)(1). If the voter had gone to the wrong precinct, the registrars will tell the voter that as well and that his or her votes were counted only for the appropriate races. O.C.G.A. § 21-2-419(d)(2).

#### 4. Assisting Voters

There are provisions under State law for voters to receive assistance when casting their ballots, either in person or absentee. A physically disabled or illiterate voter may receive assistance from another voter in the same county or municipality or from the same categories of relatives who can make an application for or deliver an absentee ballot. O.C.G.A. § 21-2-385(b). If the voter is outside of the county or municipality, then a notary public can provide such assistance. *Id.* However, any person who assists another person to vote absentee must complete an oath prescribed by law demonstrating the statutory disability and that the ballot was completed as the voter desired. O.C.G.A. §§ 21-2-384(c), 21-2-385(b). Where there are no federal candidates involved in the election, a person can assist no more than 10 voters in any primary, election or run-off. O.C.G.A. § 21-2-385(b).

A person may also receive assistance when voting at the polls if they are unable to read the English language or if he or she has a physical disability that renders the

voter unable to see or mark the ballot, operate the voting equipment or enter the voting booth. O.C.G.A. § 21-2-409(a). In order to do so, everyone except a blind voter must take an oath showing the reason they need assistance. *Id.* The person providing the assistance to a voter must sign on the oath. *Id.* Where there is a federal candidate on the ballot, the voter can select anyone they want to assist them in voting, except for the voter's employer, an agent of that employer or an officer or agent of the voter's union. O.C.G.A. § 21-2-2409(b)(1). Where there is no federal candidate on the ballot, the voter can select any other resident of the precinct or a parent, sibling, spouse or child to assist them inside the voting booth. O.C.G.A. § 21-2-409(b)(2). Again, as with absentee voting, no person may assist more than 10 voters in any such primary, election or runoff. *Id.*

### **PERSISTENT ELECTION PROBLEMS**

#### **1. Conduct at and around Polling Places**

In order to preserve order and to assure the fairness and impartiality of the election process, the conduct of people at polling places on Election Day is explicitly regulated and controlled. The area beyond which voter's identifications are confirmed and voting occurs is off-limits to all but authorized personnel. O.C.G.A. § 21-2-413(f). Only voters or their children under the age of 18 can go into this area. *Id.*

No two voters can be in the same voting booth, unless one is giving assistance to another. O.C.G.A. § 21-2-413(a). A voter cannot remain in a booth for an unreasonable period of time and can be removed by order of a poll officer. O.C.G.A. § 21-2-413(b). No voter can go back into a voting booth after having left it,

except to provide assistance. O.C.G.A. § 21-2-413(c). There can be no electioneering, campaigning, or solicit of votes within a polling place, including the posting of written or printed materials. O.C.G.A. § 21-2-413(d). No voter can use photographic or other electronic monitoring devices and *no voter can use a cellular phone with the enclosed space at a polling place.* O.C.G.A. § 21-2-413(e).

When the polls close, those people who are waiting to vote either inside the enclosed space after confirming their identity or who are then in line waiting can still vote. O.C.G.A. § 21-2-413(g). No one else can join the line and vote. *Id.*

No one can solicit votes in any manner or any means around a polling place. O.C.G.A. § 21-2-414. Specifically, Georgia law prohibits on any primary or election day any such campaigning activity or solicitation for signatures on a petition within 150 feet of the outer edge of any building where a polling place is located, within the polling place or within 25 feet of someone in line to vote. O.C.G.A. § 21-2-414(a, b).

Additionally no one can campaign or solicit votes or petition signatures in any manner in a room where an absentee ballot is being cast. O.C.G.A. § 21-2-414(c, d). No person, except a poll official, can use a cellular phone or other electronic communication device once they have been issued a ballot or entered the voting booth. O.C.G.A. § 21-2-414(c).

## 2. Campaign Literature

Georgia law provides some restrictions on where campaign literature may be posted and what it may contain. First, it is unlawful to place campaign posters, signs and advertisements on the right of way of any public street, road or highway; on any public property or building; on any private property without the permission of the owner

or on any property zoned for commercial or industrial use unless permitted by a zoning ordinance. O.C.G.A. § 21-1-1(a). A violation of this code section is more than just littering; it is a misdemeanor. O.C.G.A. § 21-1-1(b).

In addition to the restrictions noted above, there are requirements that campaign literature not be distributed, circulated, disseminated or published without there being an identification of the name and address of the person or organization which has produced or is disseminating the material. O.C.G.A. § 21-2-415(a). *But see McIntyre v Ohio Elections Commission*, 514 U.S. 334 (1995). When such material is distributed by an organization, the names and addresses of at least three of the highest officials of the organization should be included on the material. O.C.G.A. § 21-2-415(a). Under this same provision, a candidate may not use campaign funds to pay for such literature without the material revealing that the candidate has helped pay for the expenses and such materials are in compliance with the statute if the candidate's name and the office sought are included on the literature. *Id.*

Finally, the law prohibits the use of the name or any colorable imitation of the name of an existing person or organization for an endorsement or in circulating or publishing campaign literature unless the person or organization has given permission for its use. O.C.G.A. § 21-2-415(b). A violation of this provision is also a misdemeanor. O.C.G.A. § 21-2-415(c).

### 3. Election Fraud

Much of the election process is designed to prevent anyone from improperly manipulating or interfering with the operation and outcome of an election. There are procedural safeguards put in place to protect the integrity of the process and there are

sanctions, both civil and criminal, for violations of the Code. Misdemeanor violations of the Code can be punished by fines between \$100 and \$1,000 or imprisonment of up to 12 months. O.C.G.A. § 21-2-599. Felony violations can be punished by fines not to exceed \$10,000 or imprisonment for one to ten years, or both, as a misdemeanor in the discretion of the court. O.C.G.A. § 21-2-600.

The criminal sanctions imposed by the Code are targeted in a number of different areas. There are a series of crimes designed to discourage and punish those who might give false information or act in a fraudulent manner to officials in the election process or in investigations of alleged violations. These include:

#### Misdemeanors

O.C.G.A. § 21-2-560	Making of False Statements Generally
O.C.G.A. § 21-2-562(b)	Willful Failure to Deliver Documents

#### Felonies

O.C.G.A. § 21-2-561	False Registration Information
O.C.G.A. § 21-2-562(a)	Fraudulent Entries on Election Documents
O.C.G.A. § 21-2-563	Improper signing/alteration of Nomination Petitions
O.C.G.A. § 21-2-564	Willful destruction/Fraudulent Filing of Nomination Materials
O.C.G.A. § 21-2-565	Making of False Statements in Connection with Candidacy and Qualifications

There are also a series of criminal penalties associated with actual interference in the election process itself or with improper actions by election's officials.

#### Misdemeanors

O.C.G.A. § 21-2-567	Intimidation of electors
O.C.G.A. § 21-2-568	Improper entry into a voting booth or interfering with a person's exercise of their vote
O.C.G.A. § 21-2-573	Absentee Voting by an Unqualified Voter
O.C.G.A. § 21-2-576	Destroying, defacing or delaying delivery of ballots
O.C.G.A. § 21-2-577	Improper of removal ballots
O.C.G.A. § 21-2-578	Unfolding, Opening or Prying into Ballots

O.C.G.A. § 21-2-579	Revealing ballot for fraudulent purposes or Falsely claiming disability
O.C.G.A. § 21-2-583	Removal or Destruction of election supplies
O.C.G.A. § 21-2-584	Refusal of Poll Manager to administer Oaths to Poll Workers or Poll Officers acting without being sworn
O.C.G.A. § 21-2-585	Refusal of Superintendent to Permit Public Inspection of Documents or Destruction of Documents
O.C.G.A. § 21-2-586	Refusal of Secretary of State to permit Public Inspection of Documents or Destruction of Documents
O.C.G.A. § 21-2-588	Premature Counting of Votes by Poll Officers
O.C.G.A. § 21-2-589	Willful Omissions by Poll Officers
O.C.G.A. § 21-2-590	Poll Officers permitting unqualified persons to vote, refusing to permit qualified persons to vote or unlawfully rendering assistance
O.C.G.A. § 21-2-591	Permitting Giving of Unlawful Assistance to Voters
O.C.G.A. § 21-2-592	Failure to Keep Records of Assisted Voters
O.C.G.A. § 21-2-593	Hindrance or Delay of Poll Officers by Law Enforcement
O.C.G.A. § 21-2-596	Willful Failure of Public or Political Officer to Perform Duty
O.C.G.A. § 21-2-597	Intentional Interference with Performance of Election Duties
O.C.G.A. § 21-2-598	General Violations of the Election Code
O.C.G.A. § 21-2-600	Improper Use of Voters List
O.C.G.A. § 21-2-560	Paying Persons to Solicit Votes

### Felonies

O.C.G.A. § 21-2-566	Interference with Primaries and Elections
O.C.G.A. § 21-2-569	Interfering with Poll Officers
O.C.G.A. § 21-2-570	Giving or Receiving Money or Gifts for Voting
O.C.G.A. § 21-2-571	Voting by an Unqualified Voter
O.C.G.A. § 21-2-572	Repeat Voting in the Same Election
O.C.G.A. § 21-2-574	Unlawful Possession of ballots
O.C.G.A. § 21-2-575	Making or Possessing Counterfeit Ballots
O.C.G.A. § 21-2-580	Tampering with Voting Machines
O.C.G.A. § 21-2-581	Unauthorized Making/Possessing of Voting Machine key
O.C.G.A. § 21-2-582	Tampering with a Vote Recorder or Tabulator
O.C.G.A. § 21-2-582.1	Tampering with any Voting Equipment
O.C.G.A. § 21-2-594	Improprieties by Printer in Printing of Ballots

## **RECALL ELECTIONS**

A recall election is essentially a referendum on whether an elected official should remain in office and it is authorized under the Georgia Constitution, as noted above.

GA. CONST. Art. II, Sec. II, Para. IV. The General Assembly in O.C.G.A. § 21-4-1 *et seq.* has exercised its discretionary authority to prescribe the procedures that must be followed to obtain that referendum election.

Every elected public official is subject to being recalled. O.C.G.A. § 21-4-4(a).

Grounds for such a recall are:

1. The official has, while holding office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office *and* adversely affects the rights and interests of the public; *and*,
2. That official has also:
  - (a) Committed an act or acts of malfeasance while in office;
  - (b) Violated his or her oath of office;
  - (c) Committed an act of misconduct in office;
  - (d) Failed to perform duties prescribed by law; *or*
  - (e) Willfully misused, converted or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed.

O.C.G.A. § 21-4-3(7). The discretionary performance of a lawful act or a prescribed duty cannot be a ground for a recall. *Id.* An act of “misconduct” in office means an unlawful act committed willfully or a willful violation of the State’s Code of Ethics for Government Service contained in Code Section 45-10-1. O.C.G.A. § 21-4-4(8).

In order to have a recall election, a petition process is mandated. This is a two-step process. First, there is a process of making an application to circulate a recall



petition and then, if the application process is successful, there is the actual petition process for the actual recall election.

An application to circulate a recall petition cannot be made within the first or last 6 months of an official's term of office. O.C.G.A. § 21-4-5(a). The application form is promulgated by the Secretary of State and must be obtained from the local election superintendent, who numbers and records it and notifies the official who is the subject of the recall. O.C.G.A. § 21-4-5(b)(2, 3). When signed, it must contain specific information as outlined by law and is circulated and filed by sponsors, who were both registered to vote and eligible to vote in the last election for the office and who now live in the electoral district of the official sought to be recalled. O.C.G.A. §§ 21-4-4(9), 21-4-5(a). There must be either be a maximum of 100 sponsors for the application or a number equal to at least 10% of the number of electors who were eligible to vote for the office at the last election, whichever number is smaller. O.C.G.A. § 21-4-5(c). The law provides 15 days in which to gather this number of signatures. O.C.G.A. § 21-4-5(f)(1).

Once these signatures are gathered, the application can then be submitted to the election superintendent for verification. O.C.G.A. § 21-4-5(f)(2). It cannot be amended, supplemented or returned once it has been filed for verification. O.C.G.A. § 21-4-5(g). The superintendent must notify the subject official in writing that the application has been filed O.C.G.A. § 21-4-5(f)(3). The superintendent then has unrestricted access to election records to verify the information on the application and has 5 business days to do so. *Id.* A superior court judge can extend that time for a period not to exceed 15 days. O.C.G.A. § 21-4-5(f)(3).

In the meantime, within four business days of the filing of the application, the subject official can file with the superior court for a review of the sufficiency of the grounds of the recall in the application. O.C.G.A. § 21-4-6(a). The Recall Act lays out a process for assigning a judge to determine the sole legal issue of the sufficiency of the facts alleged to support a recall. O.C.G.A. § 21-4-6(c, d, e, f). The chairperson of the application drive bears the burden of proof that probable cause exists to show the grounds alleged and the court may permit discovery on the issues. O.C.G.A. § 21-4-6(f). During this time, all other recall proceedings are suspended. Although, if a recall petition has already been issued, signatures gathered prior to the judicial review can still be counted. O.C.G.A. § 21-4-6(g). Either party can seek discretionary appeal of the court's ruling on the sufficiency of the application grounds. *Id.*

If the court rules the petition can go forward, the actual process to call for a recall election can go forward. To recall a public officer who serves state-wide, there must be a number of valid signatures equal to at least 15% of the number of voters who were registered and qualified to vote for that office at the last preceding election and at least one-fifteenth of each of those numbers of voters must reside in each of Georgia's now 13 Congressional districts. O.C.G.A. § 21-4-4(a)(1). For other public officers, the petition must contain a number of signatures equal to at least 30% of the number of electors registered and qualified to vote for any candidate for that office in the last election for that office. O.C.G.A. § 21-4-4(a)(2). A recall petition can only demand the recall of one official, so separate petitions meeting these requirements must be circulated for each official. O.C.G.A. § 21-4-4(b).

The signers of a recall petition must be registered voters eligible to vote in the recall election and whom vote in the electoral district of the official sought to be recalled. O.C.G.A. § 21-4-8(a). It must be signed in the presence of a circulator, who certifies each page of the petition, states the date and the signer's residence and, if it is circulated in more than one county, the county of residence of the signer must also be shown on the face of the petition. O.C.G.A. § 21-4-8(a, b). The petition cannot be circulated or signed by any person in any location where alcoholic beverages are sold or served. O.C.G.A. § 21-4-8(a).

A recall petition can only be circulated for 90 days in relation to a statewide office, for 45 days for any other office where 5,00 or more signatures are required or for 30 days for any recall petition for any other office where there are less than 5,000 signatures needed. O.C.G.A. § 21-4-11(c). The election superintendent then has 30 days to verify the signatures on the petition, or 45 days if there is more than one petition. O.C.G.A. § 21-4-11(a). If certified as sufficient, the superintendent must issue the call for the recall election within 10 days and the election must be held generally within 30 to 45 days. O.C.G.A. § 21-4-13(a).

A majority of the vote in favor of the statutorily worded recall question removes the officer from office. O.C.G.A. § 21-4-13(e, f). A special election is then called to fill the vacancy. O.C.G.A. § 21-4-13(g). Should the recall process fail, no further recall petitions can be filed against the same official for at least six months from the date of the denial of an insufficient petition or the date of the unsuccessful recall election. O.C.G.A. § 21-4-14.

## **THE VOTING RIGHTS ACT OF 1964 – SECTION 5**

Finally, no discussion of election law, practices or procedures in Georgia is complete without addressing Section 5 of the Voting Rights Act of 1964, as amended. 42 U.S.C. § 1973c. This portion of the Voting Rights Act was enacted by Congress to prevent the restoration of illegal and discriminatory barriers to voting in jurisdictions which had such laws in effect on November 1, 1964. *Id.* Section 5 mandates that such a “covered jurisdiction” cannot seek to enforce any change voting, standard practice or procedure without receiving approval or preclearance of that change from the federal government. *Id.*

There are essentially two methods of obtaining that preclearance approval. First, a covered jurisdiction may file a declaratory judgment action before a three-judge court in the district court for the District of Columbia, showing that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or any right as guaranteed under the Voting Rights Act. *Id.*

An alternative to filing such a lawsuit is to submit the proposed change to the Attorney General of the United States, through the Department of Justice, for an administrative determination that the change would meet the standards of Section 5. *Id.* By statute, the Attorney General has only 60 days to make this determination, although he or she may ask for additional information and extend this review period. *Id.*

The Department of Justice (DOJ) has promulgated rules outlining their jurisdiction and review procedures for Section 5 submissions. 28 C.F.R. § 51.1 *et seq.* The rules covering Section 5 submissions explain in detail what information is necessary and optional in making a submission to the DOJ. See 28 C.F.R. §§ 51.20,

51.26 – 51.28. The rules also provide some examples of changes that should be submitted, such as changes in qualifications for voting, changes in the use of a language other than English in the electoral process, changes in boundaries of voting precincts or annexations of land. 28 C.F.R. §§ 51.13, 51.61. The setting of any special election where there is any discretion in the selection of the election date is a covered change under Section 5. 28 C.F.R. § 51.17.

Before a matter can be submitted for preclearance, though, it must be final. 28 C.F.R. § 51.21. The Attorney General will not review submissions that are considered premature. 28 C.F.R. § 51.22. If the DOJ determines that the submission is inappropriate, it will make no determination on the merits of the request for preclearance. 28 C.F.R. § 51.35.

The DOJ calculates its 60-day review period as 60 calendar days from when the submission is received, except that the actual day of receipt is not counted. 28 C.F.R. § 51.9. If for some reason the DOJ should fail to respond to a submission at all during the review period, the submission would stand precleared. 28 C.F.R. § 51.42. That would be an unusual circumstance.

Otherwise, during the review period, the DOJ may receive comments from interested parties or may affirmatively investigate to find information on the subject of the submission. 28 C.F.R. §§ 51.29, 51.38. A jurisdiction might choose to also send in additional information, but the voluntary providing of additional material information to the DOJ during that first 60-day period may result in that first review period being re-started. 28 C.F.R. §§ 51.39. Additionally, the DOJ itself may request additional information and starts a new and final 60-day review period can be started. 28 C.F.R. §

51.37(c). A failure to respond to such a request or to otherwise state that the additional information is unavailable could lead to an objection to the proposed change or a failure to make any determination on the submission. 28 C.F.R. §§ 51.35, 51.40. While, the DOJ may ask for more information during that second review period, it does not stop the clock running on that submission. 28 C.F.R. § 51.37. A jurisdiction can request faster, expedited consideration of a submission, but the granting of that request is discretionary with the DOJ. 28 C.F.R. § 51.34.

If the DOJ preclears the proposed change, records of the preclearance should be kept permanently. It is necessary for future changes to be able to demonstrate that past changes have also been precleared. Additionally such information is necessary to show the jurisdiction's compliance with Section 5 and to rebut any suits against the jurisdiction claiming a failure to preclear a covered change. However, even if the change is precleared, it does not preclude future legal action by the Attorney General under other parts of the Voting Rights Act. 28 C.F.R. § 51.55(b).

If the proposed change is not precleared, the jurisdiction may request reconsideration of the decision, but otherwise there is no judicial review of the Attorney General's decision. 28 C.F.R. §§ 51.48, 51.49. The covered jurisdiction can abandon the change, attempt to obtain preclearance for another change or seek preclearance through a declaratory judgment action.

## **CONCLUSION**

If nothing else, this paper should have demonstrated that the area of election law is complex and constantly changing. The information here is just the tip of the iceberg. There is a wealth of additional information out there in the Code and the related federal and state case law. When a question or issue comes up, it's time to hit the books.

## **APPENDIX ONE**

INFORMATION RE ELECTION SUPERINTENDENTS, BOARDS OF REGISTRARS,  
BOARDS OF ELECTIONS, AND BOARDS OF REGISTRATION AND ELECTIONS  
(As of 11/1/01)

Probate Judge as Election Superintendent with a Board of Registrars (102 Counties):

Appling	Atkinson	Bacon	Baker
Baldwin	Banks	Barrow	Berrien
Bleckley	Brantley	Brooks	Bryan
Bullock	Butts	Calhoun	Camden
Candler	Charlton	Chattahoochee	Chattooga
Clay	Clayton	Clinch	Coffee
Colquitt	Cook	Coweta	Crawford
Crisp	Dade	Decatur	Dodge
Dooly	Early	Echols	Effingham
Elbert	Evans	Franklin	Gilmer
Glascocock	Grady	Greene	Habersham
Hancock	Harris	Hart	Heard
Irwin	Jackson	Jasper	Jeff Davis
Jefferson	Jenkins	Lamar	Lanier
Laurens	Long	Long	Lumpkin
Macon	Madison	Marion	Meriwether
Miller	Mitchell	Monroe	Montgomery
Morgan	Oglethorpe	Paulding	Peach
Pierce	Pike	Pulaski	Putnam
Quitman	Rabun	Randolph	Schley
Screven	Seminole	Talbot	Taliaferro
Taylor	Telfair	Thomas	Toombs
Treutlen	Troup	Twiggs	Upson
Walton	Ware	Warren	Washington
Wayne	Wheeler	White	Wilcox
Worth			

Board of Registrars with Board of Elections (12 counties):

Carroll	Chatham	Douglas	Emanuel
Hall	Henry	Liberty	McIntosh
Murray	Spalding	Tattnall	Turner



Combined Voter Registration and Election Boards (46 counties):

Bartow	Ben Hill	Bibb	Burke
Catoosa	Cherokee	Clarke	Cobb
Columbia	Dawson	Dekalb	Dougherty
Fannin	Fayette	Floyd	Forsyth
Fulton	Glynn	Gordon	Gwinnett
Haralson	Houston	Johnson	Jones
Lee	Lincoln	Lowndes	McDuffie
Muscogee	Newton	Oconee	Pickens
Polk	Richmond	Rockdale	Stephens
Stewart	Sumter	Terrell	Tift
Towns	Union	Walker	Webster
Whitfield	Wilkinson		

Source: Georgia Office of the Secretary of State  
4/2002

## **APPENDIX TWO**

### **VOTING EQUIPMENT USED BY GEORGIA COUNTIES<sup>9</sup>**

COUNTY	VOTERS	TYPE OF EQUIP PRECINCTS	NUMBER PRECINCTS	TYPE OF EQUIP ABSENTEE
APPLING	9,576	VM-SHOUP	17	PB
ATKINSON	3,453	VM-SHOUP	3	PB
BACON	6,196	VM-SHOUP	5	PB
BAKER	2,390	VM-SHOUP	5	PB
BALDWIN	18,157	VM-SHOUP	14	VR-DATAVOTE
BANKS	6,936	OS-ES&S	13	OS-AIS
BARROW	18,157	OS-AIS	13	OS-AIS
BARTOW	38,346	OS-OPTECH	15	OS-OPTECH
BENHILL	7,867	OS-OPTECH	4	OS-OPTECH
BERRIEN	7,532	OS-AIS	9	OS-AIS
BIBB	72,405	OS-AIS	50	OS-AIS
BLECKLEY	5,648	VM-SHOUP	1	PB
BRANTLEY	7,598	VM-SHOUP	9	PB
BROOKS	7,307	VM-SHOUP	11	PB
BRYAN	10,794	VM-SHOUP	7	OS-GLOBAL
BULLOCH	24,479	OS-AIS	14	OS-AIS
BURKE	11,080	VM-SHOUP	15	PB
BUTTS	9,117	OS-AIS	10	OS-AIS
CALHOUN	3,266	VR	5	VR
CAMDEN	16,722	VM-AVM	12	PB
CANDLER	4,323	VM-SHOUP	6	PB
CARROLL	38,586	OS-AIS	29	OS-AIS
CATOOSA	26,820	OS-AIS	12	OS-AIS
CHARLTON	4,458	VM-SHOUP	8	PB
CHATHAM	103,492	OS-ACCUVOTE	109	OS-ACCUVOTE
CHATTAHOOCHEE	2,779	VM-SHOUP	1	PB
CHATTOOGA	10,856	OS-OPTECH	13	OS-OPTECH
CHEROKEE	72,981	OS-AIS	33	OS-AIS
CLARKE	42,789	VM-SHOUP	22	OS-OPTECH
CLAY	1,914	VM-SHOUP	5	PB
CLAYTON	94,435	VR	50	VR

COUNTY	VOTERS	TYPE OF EQUIP PRECINCTS	NUMBER PRECINCTS	TYPE OF EQUIP ABSENTEE
CLINCH	3,457	VM-SHOUP	7	PB
COBB	316,997	OS-GLOBAL	151	OS
COFFEE	16,877	VM-SHOUP	6	OS-OPTECH
COLQUITT	16,480	VM-SHOUP	19	OS-OPTECH
COLUMBIA	48,997	VR	37	VR
COOK	6,578	OS-OPTECH	8	OS-OPTECH
COWETA	43,222	OS-AIS	28	OS-AIS
CRAWFORD	5,440	VM-SHOUP	6	PB
CRISP	9,565	VM-SHOUP	6	OS-OPTECH
DADE	7,679	VM-SHOUP	7	PB
DAWSON	7,965	OS-AIS	6	OS-AIS
DECATUR	11,998	VM-SHOUP	14	PB
DEKALB	313,547	VR	167	VR
DODGE	10,684	VM-SHOUP	16	PB
DOOLY	5,586	VM-SHOUP	10	PB
DOUGHERTY	43,722	OS-OPTECH	30	OS-OPTECH
DOUGLAS	43,551	OS-AIS	19	OS-AIS
EARLY	5,613	OS-OPTECH	11	OS-OPTECH
ECHOLS	1,589	VM-SHOUP	1	PB
EFFINGHAM	15,816	VM-SHOUP	12	OS-OPTECH
ELBERT	10,218	OS-AIS	12	OS-AIS
EMANUEL	10,825	VM-AVM	14	PB
EVANS	4,917	VM-SHOUP	10	PB
FANNIN	12,315	OS-AIS	12	OS-AIS
FAYETTE	51,778	OS-AIS	36	OS-AIS
FLOYD	41,363	OS-AIS	25	OS-AIS
FORSYTH	49,967	VR	22	VR
FRANKLIN	9,708	OS-AIS	13	OS-AIS
FULTON	406,554	VR	289	VR
GILMER	11,190	OS-ES&S	9	OS-ES&S
GLASCOCK	1,605	VM-SHOUP	4	PB
GLYNN	35,769	OS-OPTECH	16	OS-OPTECH
GORDON	20,600	OS-OPTECH	14	OS-OPTECH
GRADY	10,930	VM-SHOUP	13	PB
GREENE	7,772	OS-OPTECH	8	OS-OPTECH

COUNTY	VOTERS	TYPE OF EQUIP PRECINCTS	NUMBER PRECINCTS	TYPE OF EQUIP ABSENTEE
GWINNETT	257,001	OS-GLOBAL	132	OS-GLOBAL
HABERSHAM	16,307	VM-SHOUP	14	OS-OPTECH
HALL	56,493	OS-OPTECH	29	OS-OPTECH
HANCOCK	5,712	VM-SHOUP	8	PB
HARALSON	12,681	OS-AIS	13	OS-AIS
HARRIS	12,383	VM-SHOUP	11	PB
HART	11,549	VM-SHOUP	7	PB
HEARD	5,597	OS-AIS	9	OS-AIS
HENRY	60,243	VR	22	VR
HOUSTON	52,334	OS-AIS	28	OS-AIS
IRWIN	4,401	VM-SHOUP	10	PB
JACKSON	17,035	OS-AIS	14	OS-AIS
JASPER	5,613	VM-SHOUP	7	PB
JEFFDAVIS	7,228	VM-SHOUP	9	PB
JEFFERSON	9,298	VM-SHOUP	8	PB
JENKINS	4,416	VM-SHOUP	5	OS-OPTECH
JOHNSON	5,406	VM-SHOUP	12	PB
JONES	11,696	OS-OPTECH	9	OS-OPTECH
LAMAR	7,448	OS-AIS	6	OS-AIS
LANIER	3,221	VM-SHOUP	3	PB
LAURENS	22,297	VM-AVM	21	OS-OPTECH
LEE	10,951	VR	8	VR
LIBERTY	15,739	VM-AVM	13	PB
LINCOLN	4,931	VR	6	VR
LONG	4,725	VM-SHOUP	5	PB
LOWNDES	39,151	OS-GLOBAL	32	OS-GLOBAL
LUMPKIN	9,235	OS-AIS	15	OS-AIS
MACON	6,671	VM-SHOUP	5	PB
MADISON	12,766	VM-SHOUP	12	PB
MARION	4,092	VR-DATAVOTE	7	VR-DATAVOTE
MCDUFFIE	10,733	OS-AIS	10	OS-AIS
MCINTOSH	6,027	VM-SHOUP	7	PB
MERIWETHER	11,387	OS-AIS	14	OS-AIS
MILLER	3,654	VM-SHOUP	1	PB
MITCHELL	9,783	OS-AIS	11	OS-AIS

COUNTY	VOTERS	TYPE OF EQUIP PRECINCTS	NUMBER PRECINCTS	TYPE OF EQUIP ABSENTEE
MONROE	10,715	OS-AIS	14	OS-AIS
MONTGOMERY	4,062	PB	7	PB
MORGAN	7,784	OS-AIS	10	OS-AIS
MURRAY	13,943	OS-AIS	7	OS-AIS
MUSCOGEE	80,850	OS-OPTECH	47	OS-OPTECH
NEWTON	29,411	VR	20	VR
OCONEE	14,226	OS-OPTECH	12	OS-OPTECH
OGLETHORPE	6,217	OS-AIS	10	OS-AIS
PAULDING	37,001	VR	17	VR
PEACH	10,714	VM-SHOUP	7	PB
PICKENS	11,817	VM-SHOUP	9	PB
PIERCE	7,610	VM-SHOUP	8	PB
PIKE	6,860	OS-AIS	8	PB
POLK	17,223	OS-ES&S	11	OS-ES&S
PULASK	15,021	VM-SHOUP	6	PB
PUTNAM	10,284	OS-OPTECH	5	OS-OPTECH
QUITMAN	1,598	VM-SHOUP	2	PB
RABUN	7,761	VM-SHOUP	9	PB
RANDOLPH	4,302	OS-OPTECH	9	OS-OPTECH
RICHMOND	86,974	VR	71	VR
ROCKDALE	34,877	OS-AIS	15	OS-AIS
SCHLEY	1,884	VM-SHOUP	1	PB
SCREVEN	7,753	VM-SHOUP	13	PB
SEMINOLE	4,733	VR	5	VR
SPALDING	24,605	VM-SHOUP	17	OS-GLOBAL
STEPHENS	13,500	VM-SHOUP	8	PB
STEWART	3,264	VM-SHOUP	6	PB
SUMTER	16,365	VM-SHOUP	9	PB
TALBOT	3,860	VM-SHOUP	8	PB
TALIAFERRO	1,332	PB	2	PB
TATTNALL	9,573	VM-SHOUP	15	PB
TAYLOR	4,786	OS-AIS	6	OS-AIS
TELFAIR	6,069	VM-SHOUP	6	PB
TERRELL	5,584	VM-SHOUP	3	PB
THOMAS	20,738	OS-AIS	17	OS-AIS

COUNTY	VOTERS	TYPE OF EQUIP PRECINCTS	NUMBER PRECINCTS	TYPE OF EQUIP ABSENTEE
TIFT	15,660	VM-SHOUP	12	OS-AIS
TOOMBS	12,266	VM-SHOUP	14	PB
TOWNS	6,443	OS-AIS	4	OS-AIS
TREUTLEN	3,541	OS-OPTECH	6	OS-OPTECH
TROUP	26,421	OS-AIS	16	OS-AIS
TURNER	4,356	VR	3	VR
TWIGGS	5,685	VR	10	VR
UNION	10,303	OS-AIS	5	OS-AIS
UPSON	14,119	OS-AIS	10	OS-AIS
WALKER	30,494	OS-AIS	18	OS-AIS
WALTON	27,556	OS-AIS	17	OS-AIS
WARE	15,797	OS-AIS	11	OS-AIS
WARREN	3,365	VM-SHOUP	6	PB
WASHINGTON	10,994	VM-SHOUP	8	PB
WAYNE	12,079	OS-OPTECH	16	OS-OPTECH
WEBSTER	1,321	VM-SHOUP	5	PB
WHEELER	2,710	OS-OPTECH	3	OS-OPTECH
WHITE	10,234	OS-AIS	11	OS-AIS
WHITFIELD	34,899	OS-OPTECH	23	OS-OPTECH
WILCOX	3,639	VM-SHOUP/PB	7	PB
WILKES	5,917	VM-SHOUP	7	OS-OPTECH
WILKINSON	5,773	VM-AVM	11	PB
WORTH	9,982	VR	15	VR

TOTAL ACTIVE VOTERS: 3,856,676

TOTAL NUMBER PRECINCTS: 2,759

Source: Georgia Office of the Secretary of State  
11/2000

## **ENDNOTES**

<sup>1</sup> See *Brooks v. Miller*, 158 F.3d 1230, 1233-34 (11<sup>th</sup> Cir. 1998).

<sup>2</sup> See e.g., *Duncan v Poythress*, 657 F.2d 691, 703 (5<sup>th</sup> Cir. Unit B 1981)(“Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554, 84 S. Ct. 1362, 1377-78, 12 L. Ed. 2d 506(1964).”

<sup>3</sup> For discussion on the meaning of “moral turpitude”, see 2000 Op. Att’y Gen U 2000-6; 1992 Op. Att’y Gen. 92-3 and 1986 Op. Att’y Gen. 86-15.

<sup>4</sup> In order to be elected to office, a candidate need only receive a 45% plurality of the votes cast. O.C.G.A. §§ 21-2-501(b), 21-2-2(22). The requirements for election to a municipal office may be varied by the city’s local laws and charter.

<sup>5</sup> A vacancy can be created by any number of situations, including resignations, abandonment of office, death of the incumbent or failure to maintain a required qualification of the office. O.C.G.A. § 45-5-1(a).

<sup>6</sup> A “precinct” or a “voting precinct” is nothing more than a defined geographic area where all the voters are assigned to vote at the same polling place. O.C.G.A. § 21-2-2(28). See also O.C.G.A. § 21-2-260 through 21-2-264 for guidance on selecting and defining precincts.

<sup>7</sup> Georgia’s method of ballot access by petition has been specifically upheld by the U.S. Supreme Court and other courts. *Jenness v. Fortson*, 403 U.S. 431 (1971); accord *Illinois State Board of Elections v. Socialist Workers Party et al.*, 440 U.S. 173 (1979); *Norman v. Reed*, 502 U.S. 279, 295 (1992). See also *McCrary v. Poythress*, 638 F.2d 1308 (5th Cir. 1981); *Amendola v. Miller*, 161 F.3d 22(11<sup>th</sup> Cir. 1998).

<sup>8</sup> Candidates for superior court clerk, probate judge, sheriff, tax commissioner and magistrate pay a qualifying fee based on the minimum salary provided by general law for that office, exclusive of any cost-of-living and longevity supplements. O.C.G.A. § 21-2-131(a)(1).

<sup>9</sup> Key to Abbreviations: OS = Optical Scan (including AIS, OPTEC, ES&S AND GLOBAL types); PB = Paper Ballot; VM = Lever-type Voting Machine (Including AVM or SHOUP types); VR = Punch Card Vote Recorder (Including Data Vote type).